



OUR LIBERTY AND HAPPINESS AS A NATION ARE IN OUR OWN KEEPING, IF THEY ARE EVER SACRIFICED IT WILL BE ON THE ALTAR OF PARTY SPIRIT, AT THE INSTANCE OF DESIGNING AMBITION AND BY OUR OWN HANDS.

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**Speech of Mr. Woodbridge,
DELIVERED IN THE SENATE OF
THE UNITED STATES, FEB. 14,
1844, ON THE BILL TO RE-
MIT THE FINE IMPOSED UP-
ON GEN. JACKSON AND UPON
THE INCIDENT OF THE QUESTION
OF THE RIGHT ASSUMED BY
THE LEGISLATURE OF A
STATE, TO INSTRUCT A MEM-
BER OF THE SENATE OF THE
UNITED STATES.**

MR. PRESIDENT: It has not been my intention to lay before you an elaborate exposition of the views I entertain on the subject of the bill before the Senate; it has been too much and too generally discussed to render such an exposition appropriate. But I find myself placed, as other Senators have been placed, in circumstances which seem to make it proper for me to express some opinion on an important topic which has incidentally arisen. That opinion I have no desire to suppress, nor would it be proper for me to withhold it. My name will be found on the list of those who, on a former occasion, voted in favor of a remission of the fine which has been so much the subject of remark; but I gave the vote rather in deference to the wishes of others than from any feelings or well-reasoned opinion of my own. I had some misgivings then, and have since had, as to whether that vote were sanctioned by duty. I remembered the trite remark, (too little considered, perhaps, because it is true,) that the Judiciary is by far the weakest of those three great departments into which all the powers of Government were distributed. It is a department which can stimulate the ardor of its advocates by no pecuniary largesses; it can increase the number of its supporters by no distribution of money; it has nothing to do with the public revenues. It can sustain itself and enforce its decrees by no physical force; for to the army it is a stranger, and over the militia it has no control. We have sometimes heard, indeed, about "the sword of justice." But here, where the Judiciary constitutes no part of the Executive power, the expression can only be applied in the boldness of metaphor; for the Judiciary yields no public sword. Nor can that Judiciary smooth its onward march by any of the allurements of office, by any of the seductions of patronage. It bestows no office—and of patronage, it has none. And yet that, the department through which your laws are sought to be enforced; which carries down equity and justice to the cottage as well as to the palace; which furnishes to the weak, its only barrier against oppression; and to which all of us must look, for protection in the great rights of personal security, personal liberty, and of private property. The only guaranty of its usefulness, of its continued existence even, is to be found alone in the esteem and respect in which it may be held by a free and a generous people—a people which, hitherto, has most highly appreciated its value. And when I consider how powerful that influence is, which this body, unconsciously perhaps, exerts upon public opinion in all matters with fearlessness at any action of yours, that might, in any wise, weaken the hold which the Judiciary may have upon the public confidence, which might seem even to bring its high standing into doubt, or which, by any ambiguity, could be tortured into an imputation of wrong. But the bill for which I voted, after the modifications it had received in the Senate, no longer casts reproach upon the distinguished jurist whose decision has been so much canvassed; and, if it left in conjecture the motive of passing it at all, it at least did not purport to cast a shade of disgrace upon the memory of him who has long since passed to the grave. Prima facie, that bill in no wise purported to review judicially the decision of a court, nor to reverse on error its sentence. It appeared, at least I was desirous so to consider it, to be a mere matter of dollars and cents—an appropriation *pro tanto* of the public money. It was an appropriation called for by great numbers of that public whose money it was. Individuals expressed to you their wishes in this regard, and public bodies. The constituted authorities of the State from which I come, and many other legislative bodies also, on this matter expressed their wishes. And it is because of this fact, because of the form in which those wishes are ex-

pressed, and because of the deference shown here for such legislative resolutions, that I have asked the indulgence of the Senate while I endeavor briefly to explain to you the views which, on the grave and important question to which those resolutions gave rise, I entertain.

But I desire first to premise, and on that point I wish to be distinctly understood, that there is no desire nearer my heart, than that I may be permitted, consistently with the general good, to advance the prosperity and the true and best interests of the community within which I dwell; nor can I conceive of any earthly satisfaction more pure or more elevated than that which a consciousness of having promoted those interests would induce. That I may the better comprehend them, it will continue to be a matter of much gratification to me that the constituted authorities of the beautiful State in which I live, should be pleased to communicate their wishes to me; and it shall be my pride, and my pleasure, to strive to give effect to them, so far as I can, consistently with those duties of higher obligation, which I owe to that Constitution which I have solemnly sworn to support. Beyond that point I cannot go—I cannot seek to give effect to wishes that may seem to conflict with the fundamental law of the land, nor at the sacrifice of any of those great principles of civil and political freedom upon which the Constitution itself is founded, and which are below it, all about it, and intertwined with it. So much being premised, sir, I proceed to say, that in that which I believe is called "the doctrine of instruction," I do not affect to be learned. I have great respect for those experienced and eminent statesmen whose opinions are, in this particular, unlike my own; and, least of all, am I disposed to condemn, with arrogant positiveness, any opinions such gentlemen may have announced. But, in the performance of my public duties here, I must take as my guide my own convictions of right and truth; my own individual opinions, and not those of others. And now, sir, as to this right, assumed by the constituted authorities of a State, to "instruct," to command, any of the constituted authorities of this General Government, in a matter of duty here, I can perceive no ground upon which it can rest.

I am not altogether a stranger to public life. I have, at different times, been a member of various legislative and other deliberative bodies; and, although it be true that I have never been placed in circumstances in which it became my duty to form an opinion on this particular point until since I had the honor of a seat here; yet, from the time I first felt myself competent to form any opinion upon any political subject, the leaning of my mind has always been against the right assumed. And I have indulged in the belief, sir, that a brief consideration of the origin and the features, in this respect, of our complicated forms of Government, will at once show the heretical character and tendency of the asserted claim. No American statesman will assert that, like the hereditary nobility of Europe, men are here born legislators—that any here are "rocked and dandled from their cradles into power!" All political power, with us, is derivative. Nor can it be justly claimed that any aggregate political body, within the limits of the Union, possesses any political right whatever, unless by grant from the body of the people, in their own fundamental law, the Constitution; for, with the body of the people, all political power ultimately rests. The people, then, of all the States, in the exercise of their unquestioned right, were pleased to prescribe for themselves and for us two distinct co-existing systems of Government; each acting within its proper sphere, each independent of the other, and each sovereign and exclusive of the other, while thus moving within its prescribed orbit. In adopting such a plan, all former analogies were manifestly disregarded. The Amphictyonic, the Achaean, the Hæcæan League, furnish no precedents; neither did the Association of the Cantons of Switzerland, nor the Germanic Confederacy. In those more ancient establishments the aggregate power acted only upon the States, upon Sovereignities, as independent political bodies. That was the defect of the old Confederation, and it proved a fatal one. But, under our existing systems the aggregate power of the whole acts directly upon the States, but upon the people, upon natural persons, and upon individual property; and those natural persons react directly upon their own Governments, whether State or National. Our plan of Government was then a novelty, an anomaly; and, violating the maxim of the jurists, it created *imperium in imperio*; and each Government is sovereign within its proper sphere. Your act, sir, is sovereign and paramount, and will be enforced, while Congress shall continue within the

limits assigned for it. But if you transcend those limits, your act is, so far forth as you exceed your authority, void; and the proper judicial tribunal will so pronounce. In like manner, if the constituted authorities of the States, move out of the orbits assigned by the people for them, either in their State or United States Constitution, their act, founded on such excess of power, is likewise void. Now, sir, I have been "instructed" on various topics. I have been "instructed" to strive to defeat and vote against a specified article in an Indian treaty. But a State legislature is not competent to act on such a subject. The people of the State, whose agents they are, have not vested in them that power. Jurisdiction of that matter is placed by the people of all the States elsewhere. It cannot be assumed by the constituted authorities of any of the States; and how can they act understandingly in such a matter not committed to them! You know, sir, that according to those rules sanctioned by the Constitution, and by which this Senate has always been guided, the State authorities cannot, without a breach of faith and a violation of honor somewhere, obtain the knowledge requisite to enable them to act in such a matter safely, for that knowledge is in a sealed book, never opened until the Senate shall have passed upon it. As was fairly to be presumed, so the fact was; the action of the Legislature was founded upon an entire misconception: There was no such article, being of the tenor and having the effect they supposed.—The same State authorities also instructed two of the constituent members of this body to use every effort to obtain, and to vote for, such amendatory act of that law (which once graced your statute book, and which unhappily was stricken from it) establishing a "uniform system of bankruptcy," as to comprehend within the coercive provisions of that act all banking and other corporations. Now sir, I could advocate no such measure; for however desirable in its practical operation it might seem to be, yet it appeared to me that it was not within your competency to pass such an act. A corporation is the product of an ordinary exercise of legislative power. If the Legislature have jurisdiction of the subject matter, and if they should think that the end had in view (whether it relate to the construction of roads and canals, the establishment of manufactures, or any other thing regarding the internal policy of the State) could be better accomplished in that mode, they may well, for such purpose, create a corporation, and impart to it such faculties and impose upon it such conditions, as to that Legislature it may seem meet. But if you, by your bankruptcy law, or any other legislative enactments, may impart to them other faculties, impose upon them new and other conditions, you vary the terms and the tenure of their existence; you make them subject to a new master; and thus, by extending your own strong arm, you will bring every corporate authority within the Union, for whatever purpose created, to the footstool of Federal power here, and make them subservient to your purposes! Is this within your Constitutional competency? Can you thus enter the halls of Legislation of every State of the Union, and sweep from before its own Legislature, the creature of its own power?

But however that may be, it is very clear, that no power was ever vested in the constituted authorities of a State to pass a "uniform system of bankruptcy." That does not come within the assigned scope of their action. The people have not vested in the authorities of the States the power to act on that subject. Any act of theirs, therefore, on that subject is an excess of authority; it has no sanction; it is *coram non iudice*, and cannot be enforced! How, then, can the State authorities assume to dictate to this body, or any of its members what course in this regard it shall pursue? So of the disposition of the national revenue. What power of control has been given to the State Legislatures, in either the State or United States Constitutions, over that subject? None, surely. And if the bill before you is to be deemed a judgment of censure upon Judge Hall, or a reversal of the judgment of the United States court, that defect of power is still more manifestly evident. Their opinions, as individuals, I shall seek for with earnestness and listen to with deference, but their power as a legislative body to command in matters of which jurisdiction was not conferred upon them, I cannot recognize.

But these "instructions" are void, and this intervention inoperative, not merely from an inherent defect of power on the part of the State authorities, but it is void also because it is a positive invasion of the rights and duties of this body. Suppose your army should send its mandate here—as in the times of Cromwell, and

of Bonaparte, and of the Cæsars before them, armies were wont to do—would you listen to it? Surely not. And why? Because it would be an invasion of your privileges. It would be the interposition of a power not known to, nor sanctioned by the Constitution. Then you will listen to no mandate purporting to direct either the body, or any of its members, as to what you or they shall do, or shall not do, in a matter of which you legitimately have cognizance, if it emanate from a power not authorized by the Constitution so to interpose. It is the right of this body, and of the whole country, that, upon a subject clearly within your legitimate jurisdiction, each of its members should come to the decision untrammelled: with no guide but his oath, no light but the Constitution and the best faculties of his own mind. These subjects—of treaties, of a uniform system of bankruptcy, of the disposition of the national revenue—are matters within the undoubted and exclusive jurisdiction of the National Government. Shall other authorities come in and control your action, or wrest the subject from you? Sir, free Governments, in this world, have been far more frequently overturned by slow, cautious, and silent innovation, than by direct or open assault. And the interposition here of a principle of influence and of power unknown to the Constitution, and not to be found among its defined organic powers, in reference to such an exercise of it seems to me of the most dangerous tendency.

All avenues of information should most certainly be open to us. We should be well advised of the public sentiment. Ours, more than any other, is a Government of opinion, of public opinion, not of physical force. But the dictation, the command of public bodies, of the constituted authorities of other Governments, *quod hoc foreign from this*; to whom power to *let it end, is not delegated, is an invasion of the privileges of this body*, which, if persevered in and submitted to, is ominous of a fearful and fatal change in the essential principles of the Constitution itself.

The doctrine assumed is not only obnoxious to the objections I have stated, but it conflicts with our whole plan of Government; harmonizing with no part of its machinery. It is deemed necessary, for example, that freedom of debate should be guaranteed to you here; but of what use is freedom of debate, if the final result to which you must come, is already settled by a power foreign and extrinsic to this body? It is expected that you should discuss, deliberate, and finally decide, as wisdom and prudence may dictate. But *cui bono*, if the measure in consideration, be already predetermined? Sir, from early youth, you and I have been taught to look to the American Senate, not only for whatever was elevated in patriotism, but powerful in intellect, and wise in counsel. And it is because in times gone by, (it may not be proper to refer to the present time,) it is here that the American Senate acquired the name it did—a name that enlarged its capacity to do good almost limitlessly—a name that gave to its *naked opinion* a power greater than that of an "army with banners!" Sir, it was emphatically asked by a distinguished Senator at your last session—and the same appropriate figure was again most happily alluded to by another Senator during your present session—was this proud name acquired by *autamata*? Are we all machines here? Is there no deliberation? no intellect? no wisdom in counsel? no concession? no moulding of opinions here? Are we sent here as *puppets*, to be moved as the wires are pulled by those behind us? No, sir, no! And such a doctrine is as consistent with the spirit of the Constitution, and with that dignity of character upon which the capacity for usefulness of this body depends, as its assertion is unsanctioned by any grant of power by the people to the constituted authorities of the State Governments.

Sir, it has been surmised by some, that as the members of this body are appointed by the Legislative authorities of the states, therefore a right to control the action here of those members remains with the appointing power. With all proper respect, sir, I must say that such conclusion to me is a most positive *non sequitur*. Apply the proposition to other cases. The secretary of the Treasury is appointed by the President: therefore the will of the President constitutes his *supreme law*. What, then, becomes of your public treasure? The Judges owe their appointments to the same authority; are they also subject to the "doctrine of instruction?" And what would the President himself say if the doctrine were sought to be applied to him? We have had one President who was appointed by the House of Representatives; was that House, therefore, to "instruct" him

what nominations for office he should send to this body? Was he, in all things concerning the administration of the high Executive powers of this nation, a passive tool therefore in their hands to work with? Others have been appointed by the college of electors. Such is the one who now presides over the destinies of this nation. Those who appointed him are still alive; and what would Mr. Tyler say to such formal body of "instructions" as they might be pleased to send to him? How would he measure the extent of the obligation which rested upon him to obey those "instructions?" I would not speak lightly, sir, on so grave a matter; but I much incline to think that he would adopt the Hudibrastic rule, and leave such instructions to bind those who made them.

It may not be proper, Mr. President, that I should dwell longer on this point. I have already delayed you long enough. But I must take leave to say, that if it had ever entered into the intentions of the framers of this Constitution of ours to plant in the system they gave us this "doctrine of instruction," this great motive power, they could hardly have failed to have given it a conspicuous place among its organic and elemental principles; they would have sought to make it harmonize with the rest of their plan. They would have imbedded, with the principle itself, its own proper sanction, and have pointed out with clearness in what way and through what means effect should be given to so cardinal a principle. These things they have not done. But they have placed, midway and between the dangers of popular effervescence on the one side, and executive encroachment on the other, this senate. And they placed it there, that they might impart moderation and firmness to the national policy, and stability and perpetuity to our free institutions. They were eminently good, far seeing, and sagacious men; their spirit pervades all parts of their system. But press into that system this new doctrine—infuse it into the Constitution of the senate, and let it there exert its appropriate influence—and you defeat their great purposes; you destroy the most perfect of all human works.

And now, sir, a few words on the subject of the bill before you, and I have done.

The honorable the Legislature of Michigan (to whom I owe all respect and honor) have passed at different times, three several sets of resolutions relative to the fine imposed on General Jackson in 1815. Two of these sets of resolutions are, I believe, in the customary form, and resemble that stereotype edition of which we have seen so many here. The other, the second of the series, contains a clause denouncing the judgement of the court, in very unmeasured terms, as an *unjust sentence*, and in another clause that honorable body affirms "That any attempt to insert in such law (as they desire to have passed) any provisions calculated or intended to impugn the conduct or motives of General Jackson on the occasion alluded to, or to approve of the course pursued by Judge Hall, would be an insult to justice, and a gross misrepresentation." &c. To the first of these sets of resolutions I endeavored, in deference to the wishes of those honorable men who passed them, to give effect, and in a manner I have already detailed; though it was not, as I have said, without some misgivings on the point of duty.—The amendment reported and recommended by your committee on the Judiciary, and which I must regret that you have now rejected, contained no imputation upon the character or motives of General Jackson; but it disavowed all intention to condemn or pass upon the conduct or motives of Judge Hall. It was, in short, what the lawyers call a "protestando"—an exclusion of all conclusions (resulting from the terms of the bill, or the fact of passing it) against the character, conduct, or judgment of the eminent jurist, and the eminently firm and upright Judge who pronounced it. Now, sir, that amendment being rejected, I shall feel myself constrained, as at present advised to vote against this bill. And allow me to ask, on what ground do you place your right to pass it?

It is in the nature of a pension, granted for distinguished services rendered to the country? Adopt that principle, sir, and apply it to others, and I will vote for it.—I will not be among the last of those who may seek to prove that *Republics* are not *always* ungrateful. But gentlemen have refused to suffer it to rest on that principle. Is it, then, a pardon, a sort of legislative pardon, for an offence committed against your laws? Sir, the Parliament of Great Britain, in the omnipotence of its power, may grant a pardon; but can

* An oath, 'tis clear, binds him who makes it, And not the one who for convenience takes it.

you? I thought the people, sir, had placed that there; the friends *par excellence* of the General would spurn your bill if placed upon such a ground. But it is a sentence of condemnation passed by you on the conduct of a Judge, by reason of transactions that occurred some thirty years ago? against a high judicial officer who has never been heard here in his defence, but who long since has been "gathered to his fathers?" Sir, the Congress of United States can take cognizance of no such case. Where, then, do you find your authority to pass such a law? Under what head of your enumerated powers do you class it? And, after all, sir, is it not *essentially* and *in fact* a *judicial review*—a reversal upon error of the judgment of a court of the U. States? What one of all your citizens will look at this law in your statute book and come to any other conclusion? Were not all the same circumstances, which form the same basis of your opinion, likewise before the judge, and did they not constitute the elements of his? I am not, sir, disposed to be hypercritical in matters of strict construction, but I think I may ask where, in all the provisions of your Constitution, is there to be found vested in the Congress of the United States, acting in its legislative capacity; any such "judicial power?"

There remains, sir, one other consideration, which I ask leave to present: The framers of this Constitution of ours manifestly intended to lay down their work, to establish there, great and leading principles only, that they might serve as guides and landmarks for future legislation, leaving all matters of detail to the discretion of that legislative power which they created. But there is one marked exception to that general purpose. There is one matter of detail which they thought of importance enough to justify and to require more precise and detailed provisions, and the imbedding of those details in the very structure of the Constitution. They knew the importance, they fully appreciated the value, of the right of personal liberty and personal security. They knew to what perils—especially in times of war or of great public commotions—that right was exposed. They also knew that of all the contrivances ever invented by the wit of man for the protection of that great right, there had never been found any so efficacious, connected with trial by jury, as the writ of *habeas corpus*—a writ which opened the door of every prison, and whose talismanic influence no tower, nor dungeon, nor Bastille, could successfully resist. They therefore guaranteed to every citizen, and placed that guaranty prominently in their organic law, the inestimable right to avail himself of that high prerogative and constitutional writ: nor is it permitted even to this, the highest of all the great departments of Government, to suspend for a moment the benefit of that great writ, except in the cases and under the restrictions particularly set forth in the Constitution. Following out this noble conception, at a very early period in our history the Congress of the United States, by express legislative provision, made it the imperative duty of every United States Judge, upon proper requisition, *always* to issue that writ—never to deny it. This duty was then enforced by a heavy pecuniary penalty, by his oath of office, and by the Constitution itself. In like manner, the people of every State, I believe, have imbedded in their respective State Constitutions similar provisions. Look then, sir, for a moment at the condition of things as they existed when this decision, so much animadverted upon, was rendered. The Congress of the United States had refused to suspend the writ of *habeas corpus*; the Legislature of the sovereign State of Louisiana had refused to suspend the writ of *habeas corpus*; a city, in a paroxysm of joy and gratitude at its recent and signal deliverance; an army, full of exultation and pride, and of confidence in its conquering chief; and that chief, posing himself in triumph upon the new and adulatory honors that were thickening and heaping all about him, is seduced, in the intoxication of the moment, to forget that he was not a Roman Dictator. He throws into fetters a free citizen of the State and of the United States; an honored member of the Legislature of that sovereign State. A sworn and an honored Judge of a United States court is then called upon, in the name of the U. States, to issue that writ. As he respects the law, as he values his oath, as he would obey the Constitution of his country, he must issue it—he *did* issue it.—That high emblem of Constitutional power is *trampled under foot* by your impetuous General; and that Judge who has dared to do his duty, and to issue it, is himself sent ignominiously and in chains into exile. And now you are required to blot out this whole page from your country's history. No, sir, it is worse than that. What, what is the lesson such an act will teach?